



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>

SEP 29 2005

Ref: 8ENF-UFO

CERTIFIED MAIL # 7004 1350 0001 5668 3670
RETURN RECEIPT REQUESTED

Ms. Cheryl Larson, Registered Agent
LT Logging
3651 Glen Lake Road
Eureka, MT 59917-9636

Re: UNDERGROUND INJECTION
CONTROL PROGRAM (UIC)
Proposed Order and Penalty Complaint
with Notice of Opportunity for Hearing

Dear Ms. Larson:

The enclosed document is a Proposed Order and Penalty Complaint with Notice of Opportunity for Hearing ("Order") for violations of the Safe Drinking Water Act ("SDWA"). Please carefully read the Order soon, since it describes LT Logging's rights and responsibilities in this matter as well as EPA's authority, the factual basis of the violations, and the background for the proposed penalties. Also enclosed is a copy of the Rules of Practice that govern these proceedings, the required Public Notice associated with this Order and, in case LT Logging meets the criteria, an information sheet about the Small Business Regulatory Fairness Act.

LT Logging is required to take action within 30 calendar days of your receipt of this Order to avoid the possibility of having a default judgment entered against LT Logging that could impose the penalty amount proposed in the Order.

Whether or not LT Logging requests a hearing, we encourage an informal conference with EPA concerning the alleged violations in an effort to negotiate a settlement. LT Logging may wish to appear at an informal conference and/or be represented by legal counsel. To arrange for such a conference, LT Logging should contact Marc Weiner, Enforcement Attorney, Legal Enforcement Program, at the number provided below. Request for such a conference does not extend the 30 calendar day period during which a request for hearing must be submitted.



Printed on Recycled Paper

Public Notice of EPA's Order and the opportunity to provide written comments on the Order is being provided pursuant to section 1423 (c)(3)(B) of the SDWA, 42 U.S.C. § 300h-2(c)(3)(B). Should a hearing be held, any person who comments on the Order has a right to participate in the hearing.

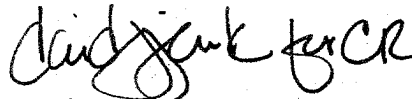
If LT Logging has technical questions relating to this matter, the person most knowledgeable on my staff is Britta Campbell Copt, UIC Enforcement Team, Technical Enforcement Program, at 1-800-227-8917 ext. 6229 or (303) 312-6229. For all legal questions, the person most knowledgeable on my staff is Marc Weiner at 1-800-227-8917 ext. 6913 or (303) 312-6913. Ms. Copt and Mr. Weiner can also be reached at the following addresses:

Britta Campbell Copt (Mail Code 8ENF-UFO)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466, or

Marc Weiner (Mail Code 8ENF-L)
Enforcement Attorney
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466

We urge LT Logging's prompt attention to this matter.

Sincerely,



Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures:

Proposed Administrative Order
and Opportunity to Request Hearing
40 C.F.R. Part 22
Public Notice
U.S. EPA Small Business Resources Fact Sheet

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

Docket No. **SDWA-08-2005-0063**

2005 SEP 29 PM 1:27

FILED
EPA REGION VIII
HEARING CLERK

In the Matter of:

LT Logging,
a Montana partnership,

Respondent.

)
)
) **PROPOSED ORDER AND PENALTY**
) **COMPLAINT WITH NOTICE OF**
) **OPPORTUNITY FOR HEARING**
)

INTRODUCTION

1. This civil administrative enforcement action is authorized by Congress in section 1423(c) of the Public Health Service Act, also known as the Safe Drinking Water Act (SDWA or the Act). 42 U.S.C. 300h-2(c). The Environmental Protection Agency (EPA) regulations authorized by the SDWA are set out in part 144 of title 40 of the Code of Federal Regulations (C.F.R.), and violations of the statute, permits, or EPA regulations constitute violations of the Act. The rules for this proceeding are the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits ("Rules of Practice")," 40 C.F.R. part 22, a copy of which is enclosed.

2. The undersigned EPA official has been properly delegated the authority to issue this Proposed Order and Penalty Complaint with Notice of Opportunity for Hearing (complaint).

3. EPA alleges that LT Logging (Respondent) has violated the Act and proposes the assessment of a civil penalty and compliance measures, as more fully explained below.

NOTICE OF OPPORTUNITY FOR A HEARING

4. Respondent has the right to a public hearing before an administrative law judge to disagree with any factual allegation made by EPA in the complaint, the appropriateness of the proposed penalty, or to present the grounds for any legal defense it may have.

5. To disagree with the complaint and assert its right to a hearing, Respondent must file a written answer (and one copy) with the Region 8 Hearing Clerk at the following address:

Region 8 Hearing Clerk
999 18th Street, Suite 300 (8RC)
Denver, Colorado 80202

within 30 calendar days of receiving this complaint. The answer must clearly admit, deny or explain the factual allegations of the complaint, the grounds for any defense, the facts you may dispute, and your specific request for a public hearing. Please see section 22.15 of the Rules of Practice for a complete description of what must be in the answer. **FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN 30 CALENDAR DAYS MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT, OR UP TO THE MAXIMUM AUTHORIZED BY THE ACT.**

QUICK RESOLUTION

6. Respondent may resolve this proceeding at any time by permanently closing the motor vehicle waste portion of its [Class V] disposal system (well) and paying the penalty amount proposed in the complaint. Such action to close the well and make payment need not contain any response to, or admission of, the allegations in the complaint. Such action to close the well and make payment constitutes a waiver of Respondent's right to contest the allegations and to appeal the final order. See section 22.18 of the Rules of Practice for a full explanation of the quick resolution process.

SETTLEMENT NEGOTIATIONS

7. EPA encourages discussing whether cases can be settled through informal settlement conferences. If you want to pursue the possibility of settling this matter, or have any other questions, contact Marc Weiner, Enforcement Attorney, at [1-800-227-8917 ; extension 6913 or 303-312-6913] or at the address identified in paragraph 25 herein. **Please note that calling Mr. Weiner or requesting a settlement conference does NOT delay the running of the 30 day period for filing an answer and requesting a hearing.**

GENERAL ALLEGATIONS

The following general allegations apply to all times relevant to this action, and to each count of this complaint:

8. Pursuant to section 1422 of the Act, 42 U.S.C. § 300h-1, and 40 C.F.R. part 147 subpart BB, section 147.1351, EPA administers the Underground Injection Control (UIC) program for Class I, III, IV, and V wells in the State of Montana. The effective date of the program is June 25, 1984. The program requirements are located at 40 C.F.R. Parts 124, 144, 146, 147, and 148.

9. On August 27, 2004, EPA received a Shallow Waste Disposal System/Well Inventory Request Form from LT Logging. The form submitted by Respondent states that the "shop is

used for storage and minor repairs of logging equipment.”

10. On October 4, 2004, an EPA representative visited LT Logging and observed an open shop with a floor drain and oil absorbent on the floor.

11. Motor vehicle waste disposal wells are defined at 40 C.F.R. §144.81(16) as follows: “Motor vehicle waste disposal wells that receive or have received fluids from vehicular repair or maintenance activities, such as an auto body repair shop, automotive repair shop, new and used car dealership, specialty repair shop (e.g., transmission and muffler repair shop), or any facility that does any vehicular repair work.”

12. Respondent’s disposal system, as identified by the Shallow Waste Disposal System/Well Inventory Request Form in paragraph 9 above, is classified as a “Class V Injection Well” as defined by 40 C.F.R. §144.6 and §146.5 and is a motor vehicle waste disposal well as defined by 40 C.F.R. §144.81(16). Respondent is currently authorized by rule (40 C.F.R. §144.24) to operate the disposal system described above. Respondent is therefore subject to applicable requirements of 40 C.F.R. §§ 124, 144 and 146.

13. As authorized by 40 C.F.R. §144.12(c) and (d) and 40 C.F.R. §144.88(b), on November 19, 2004, EPA mailed a UIC Shallow Injection Well Program letter to Respondent. The letter was received by Respondent on November 22, 2004. The letter required the Respondent to either:

a. submit a completed permit application by January 22, 2005, or

b. submit a plan for permanent closure of the motor vehicle waste disposal portion of the system (including a written schedule and plan for alternative disposal of the waste) by December 22, 2004 and permanently close that portion of the system by April 17, 2005. Once the system was closed or retrofitted, documentation needed to be provided to EPA including an as-built sketch of the drain system showing where the changes had been made.

14. LT Logging did not respond to the November 19, 2004 letter.

15. To date, EPA has not been notified by Respondent, verbally or in writing, that the disposal system has been closed.

16. The Respondent, LT Logging, as of May 24, 1990 and to the present, is a partnership organized in and authorized to do business in the State of Montana.

17. Respondent is a “person” within the meaning of Section 1401(12) of the Act, 42 U.S.C. § 300f(12).

18. Respondent, at all times pertinent hereto, owned and operated a facility that includes a maintenance shop where motor vehicle repair occurs, located at 2192 Sinclair Creek Road, Eureka, Montana.

19. Beneath the disposal system are underground sources of drinking water (USDWs), including but not limited to the shallow Northern Rocky Mountains Intermontane Basin Aquifer System.

COUNT 1

20. Respondent is in violation of 40 C.F.R. §144.12(c) and (d) and 40 C.F.R. §144.88(b) for failure to submit a written schedule for retrofitting the facility and/or plugging the drain(s), and an alternative disposal plan for your waste fluids. The duration of Respondent's violations for failure to submit a written schedule for closure of the Class V disposal system is from December 22, 2004 to the present.

COUNT 2

21. Respondent is in violation of 40 C.F.R. §144.12(a) and 40 C.F.R. §144.88(b) for failure to close or retrofit the Class V disposal system in a manner that would keep contaminants from entering a USDW. The duration of Respondent's violations for failure to close or retrofit the Class V disposal system is from April 17, 2005 to the present.

PROPOSED ORDER WITH ADMINISTRATIVE CIVIL PENALTY

22. The Act authorizes the assessment of a civil penalty of up to \$32,500 per day, for each violation of the Act, 42 U.S.C. § 1423(b). The Act requires EPA to take into account the following factors in assessing a civil penalty: the nature, circumstances, extent and gravity of the violation; any economic benefit or savings gained resulting from the violation; Respondent's history of such violations; Respondent's culpability for the violation; Respondent's good-faith efforts to comply with applicable requirements; the economic impact of the penalty on the Respondent; and other factors that justice may require.

23. In light of the statutory factors and the specific facts of this case, EPA proposes that a penalty of seven thousand dollars (\$7,000.00) be assessed against Respondent for the violations alleged above, as explained below:

Nature, Circumstances, Extent, and Gravity of Violations

Respondent owns the property and had the ability and means to comply by closing or retrofitting the waste disposal system to prevent movement of fluids to a USDW that may endanger the health or persons.

Prior Compliance History

This Order is the first enforcement action EPA Region 8 has issued to Respondent requiring compliance with the applicable UIC regulations.

Good-Faith Efforts to Comply

Respondent had not made an effort to make changes to the disposal system by the required date.

Degree of Culpability

Respondent should have been aware of all UIC requirements prior to EPA's first contact. On November 19, 2004, when Respondent received EPA's UIC Shallow Injection Well Program letter (see paragraph 13, above), Respondent had actual notice of the requirements.

Economic Benefit

An economic benefit was experienced by Respondent for failure to permit or close its Class V well. The delayed cost of compliance was, however, minimal.

Ability to Pay

EPA did not reduce the proposed penalty due to this factor, but will consider any new information Respondent may present regarding Respondent's ability to pay the penalty proposed in this Complaint.

Other Matters that Justice may Require

No adjustments made regarding these factors at this time.

24. Additionally, Respondent shall comply with the requirements of 40 C.F.R. §144.12(c)(1) and (2) and 40 C.F.R. §144.88(b), by permanently closing the motor vehicle waste portion of the Class V disposal system pursuant to a plan submitted to and approved by EPA. Respondent shall submit the plan to:

Britta Copt (8ENF-UFO)
UIC Program
USEPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466.

25. Respondent's payment of the penalty shall be made by money order or certified check made payable to "Treasurer, United States of America" and mailed to the following address:

EPA - Region 8
Regional Hearing Clerk
P.O. Box 360859
Pittsburgh, Pennsylvania 15251.

A copy of said check shall be mailed to the following address:

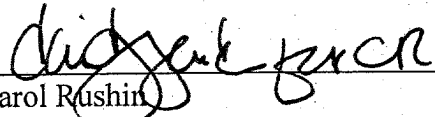
Marc Weiner (8ENF-L)
Enforcement Attorney
U.S. EPA - Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466.

26. As required by the Act, prior to the assessment of a civil penalty, EPA will provide public notice of the proposed penalty, and reasonable opportunity for the people to comment on the matter, and present evidence in the event a hearing is held. 42 U.S.C. § 1423(c)(3)(B).

27. The Administrative Law Judge is not bound by EPA's penalty policy or the penalty proposed by EPA, and may assess a penalty above the proposed amount, up to the \$32,500 per day per violation authorized in the statute.

28. This Complaint does not constitute a waiver, suspension, or modification of the requirements of any applicable provision of the Act or the UIC regulations implementing the Act, which remain in full force and effect. Issuance of this Complaint is not an election by the EPA to forego any civil or any criminal action otherwise authorized under the Act.

Issued this 29th day of September, 2005.



Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance,
and Environmental Justice
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

CERTIFICATE OF SERVICE

I hereby certify that the original and one true copy of this Proposed Administrative Order with Administrative Civil Penalty was hand-carried to the Regional Hearing Clerk, EPA Region 8, 99918th Street, Denver, Colorado, and that a true copy of the same was sent via Certified Mail Return Receipt Requested mail to:

LT Logging
3651 Glen Lake Road
Eureka, MT 59917

Attn: Cheryl Larson, Registered Agent
Darrell Larson, Registered Agent
Allen Truman, Registered Agent
Debra Truman, Registered Agent

By: Judith McTernan
Judith McTernan

Date

**U.S. ENVIRONMENTAL PROTECTION AGENCY
PUBLIC NOTICE
OPPORTUNITY FOR PUBLIC COMMENT ON
PROPOSED ORDER AND PENALTY COMPLAINT
WITH NOTICE OF OPPORTUNITY FOR HEARING
AGAINST
LT LOGGING
FOR FAILURE TO COMPLY WITH
UNDERGROUND INJECTION CONTROL REGULATIONS**

PURPOSE OF PUBLIC NOTICE

The purpose of this notice is to solicit written comments on a Proposed Order and Penalty Complaint with Notice of Opportunity for Hearing (PO) [Docket No. SDWA-08-2005-0043] that Region 8 of the United States Environmental Protection Agency (EPA) proposes to issue against LT Logging, 3651 Glen Lake Road, Eureka, Montana. The PO alleges violations of the Underground Injection Control (UIC) regulations and proposes remedies and monetary penalties for the alleged violations. The PO is issued under the UIC provisions of the Safe Drinking Water Act (SDWA) and the Act's implementing regulations. These regulations govern the injection of fluids that may endanger an underground source of drinking water (USDW).

The EPA desires to receive written comments from any interested party having knowledge of the alleged violations, or who can provide any information useful to ensure that the proposed remedies are appropriate. EPA will review any comments received on the PO, and will thereafter determine whether to modify or withdraw the PO or whether to modify the proposed penalty and/or compliance requirements.

BACKGROUND

Part C of the SDWA requires the EPA to regulate underground injection of fluid through wells to assure that underground sources of drinking water (USDW) are not endangered. Section 1421 of the SDWA requires EPA to administer UIC programs in States that do not have approved State UIC programs. Regulation of the UIC Class V Program has not been delegated to the State of Montana; therefore, EPA administers the program in accordance with title 40 of the Code of Federal regulations (40 C.F.R.), Parts 124, 144, 146, 147, and 148.

The Class V disposal system which is the subject of this PO, owned and operated by LT Logging, is located at 3651 Glen Lake Road, Eureka, Montana. A Class V injection well, pursuant to 40 C.F.R. 144.6 and 146.5, is a shallow injection well that injects fluids into or above a USDW. The well subject to this PO is of the subclass titled "motor vehicle waste disposal well," and is used to dispose of internal combustion engine repair and maintenance facility wastes.

The PO alleges that LT Logging is in violation of UIC regulations and is subject to appropriate penalties and fines for failing to: (a) prevent movement of fluids into a USDW that may cause a violation of a primary drinking water regulation under 40 C.F.R. Part 142 or otherwise adversely affect the health of persons, and (b) to close or retrofit the Class V disposal system in a manner that would keep contaminants from entering a USDW. The PO proposes that EPA assess an administrative civil penalty in the amount of seven thousand dollars (\$7,000.00) and orders LT Logging to cease discharging into the present system immediately and submit to EPA a plan in writing to permanently close the discharge system.

PUBLIC COMMENTS

Written comments on the PO are encouraged and will be accepted at the address listed below for a period of thirty (30) days after the publication of this notice. Written comments submitted by the public as well as information submitted by LT Logging will be available for public review as part of the Administrative Record, subject to the provisions of law restricting the disclosure of confidential information. LT Logging may request a hearing. Any person submitting written comments will be notified of and has a right to participate in such a hearing. The Order, as proposed, and the Administrative Record are available for review between a.m. and p.m. at the address listed below. It is recommended that those wishing to view the Administrative Record call Marc Weiner, Enforcement Attorney, Legal Enforcement Program, EPA Region 8, at (303) 312-6913 before visiting the EPA Region 8 offices.

Please submit written comments to:

Tina Artemis (8RC)
Regional Hearing Clerk
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466

A copy of the PO will also be available for public review Monday-Friday between 8:00 a.m. and 5:00 p.m. at the Lincoln County Clerk/Recorders Office, 512 California Avenue, Libby, Montana.

Any person interested in receiving their own copy of this or any future public notice of a UIC administrative action can call Britta Campbell Copt in the UIC program, EPA Region 8, at (303) 312-6229.

THE DECISION

EPA will review and consider all public comments received on the PO and will thereafter determine whether to modify or withdraw the PO or whether to modify the proposed penalty and/or compliance requirements. If the PO is revised, copies shall be provided to all parties and to all members of the public who have commented.

Date of Publication

Elisabeth Evans

Elisabeth Evans, Director
Technical Enforcement Program
Office of Enforcement, Compliance, and
Environmental Justice
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, CO 80202-3466



Protection of Environment

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS

Subpart A—General

Sec.

- 22.1 Scope of this part.
- 22.2 Use of number and gender.
- 22.3 Definitions.
- 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.
- 22.5 Filing, service, and form of all filed documents: business confidentiality claims.
- 22.6 Filing and service of rulings, orders and decisions.
- 22.7 Computation and extension of time.
- 22.8 Ex parte discussion of proceeding.
- 22.9 Examination of documents filed.

Subpart B—Parties and Appearances

- 22.10 Appearances.
- 22.11 Intervention and non-party briefs.
- 22.12 Consolidation and severance.

Subpart C—Prehearing Procedures

- 22.13 Commencement of a proceeding.
- 22.14 Complaint.
- 22.15 Answer to the complaint.
- 22.16 Motions.
- 22.17 Default.
- 22.18 Quick resolution; settlement; alternative dispute resolution.
- 22.19 Prehearing information exchange; prehearing conference; other discovery.
- 22.20 Accelerated decision: decision to dismiss.



U. S. EPA Small Business Resources

If you own a small business, the United States Environmental Protection Agency (EPA) offers a variety of compliance assistance and tools to assist you in complying with federal and state environmental laws. These resources can help you understand your environmental obligations, improve compliance and find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

Hotlines, Helplines and Clearinghouses

EPA sponsors approximately 89 free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements.

The National Environmental Compliance Assistance Clearinghouse provides quick access to compliance assistance tools, contacts, and planned activities from the U.S. EPA, states, and other compliance assistance providers: <http://www.epa.gov/clearinghouse>

Pollution Prevention Clearinghouse
<http://www.epa.gov/opptintr/library/ppicindex.htm>

EPA's Small Business Ombudsman Hotline can provide a list of all the hot lines and assist in determining the hotline best meeting your needs:
(800) 368-5888

Emergency Planning and Community Right-To-Know Act
(800) 424-9346

National Response Center (to report oil and hazardous substance spills)
(800) 424-8802

Toxics Substances and Asbestos Information
(202) 554-1404

Safe Drinking Water
(800) 426-4791

Stratospheric Ozone and Refrigerants Information
(800) 296-1996

Clean Air Technology Center
(919) 541-0800

Wetlands Helpline
(800) 832-7828

EPA Websites

EPA has several Internet sites that provide useful compliance assistance information and materials for small businesses. If you don't have access to the Internet at your business, many public libraries provide access to the Internet at minimal or no cost.

EPA's Home Page
<http://www.epa.gov>

Small Business Assistance Program
<http://www.epa.gov/ttn/sbap>

Office of Enforcement and Compliance Assurance
<http://www.epa.gov/compliance>

Compliance Assistance Home Page
<http://www.epa.gov/compliance/assistance>

Office of Regulatory Enforcement
<http://www.epa.gov/compliance/civil/index.html>

Office of Site Remediation Enforcement
<http://www.epa.gov/compliance/cleanup>

Innovative Programs for Environmental Performance
<http://www.epa.gov/partners>

Small Business Ombudsman
www.sba.gov/ombudsman



addendum to 7-1-2004 Part 22

**ENVIRONMENTAL PROTECTION
AGENCY**

40 CFR PART 22

[FRL-7855-6]

**Clarification of Address for Documents
Filed With EPA's Environmental
Appeals Board**

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending the regulations that pertain to filing appeals and other documents with the Environmental Appeals Board (EAB) under the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (CROP). Specifically, EPA is amending two regulations that specify the addresses where notices of appeal, accompanying briefs, and other documents must be filed, to provide that any filings made through the U.S. mail service must be addressed to the EAB's mailing address, and that any filings made by hand-delivery or courier must be made to the EAB's hand-delivery address. The amendments are intended to make the regulations consistent with current Agency practice and to provide clear guidance on the proper address to use under various circumstances.

EFFECTIVE DATE: This final rule is effective on December 28, 2004.

FOR FURTHER INFORMATION CONTACT:
Eurika Durr, Clerk of the Board.
Telephone number: (202) 233-0122. E-mail: Durr.Eurika@epa.gov.

SUPPLEMENTARY INFORMATION: This action is directed to the public in

general and to anyone who may want to file documents with the EAB. If you have questions regarding the applicability of this action to a particular entity or action, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

I. Background

A. What Action Is the Agency Taking?

The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (CROP), 40 CFR part 22, govern the filing of certain appeals with the EAB, and provide, in pertinent part, that:

[A]ny party may appeal any adverse order or ruling of the Presiding Officer by filing an original and one copy of a notice of appeal and an accompanying appellate brief with the Environmental Appeals Board (Clerk of the Board (Mail Code 1103B), United States Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Hand deliveries may be made at Suite 600, 1341 G Street, NW.

40 CFR 22.30(a)(1). The regulation could be read as implying that hand deliveries may be made at either of the two specified addresses. However, the address referenced in the regulation as "1200 Pennsylvania Avenue, NW." is that of the EPA mailing center, which no longer accepts hand deliveries of mail addressed to the EAB. The EPA mailing center will reject any document addressed to the EAB that is delivered by hand or courier, and such document will not be properly filed until it has been re-delivered to the physical offices of the EAB at Suite 600, 1341 G Street, NW., Washington, DC 20005. The purpose of the amendment is to delete the regulatory language at 40 CFR 22.30(a)(1) quoted above, and to replace it with the following language:

[A]ny party may appeal any adverse order or ruling of the Presiding Officer by filing an original and one copy of a notice of appeal and an accompanying appellate brief with the Environmental Appeals Board. Appeals filed through the U.S. Postal Service (except by U.S. Postal Express Mail) shall be addressed to the Environmental Appeals Board at its official mailing address: Clerk of the Board (Mail Code 1103B), United States Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Appeals delivered by hand or courier (including deliveries by U.S. Postal Express Mail or by a commercial delivery service) shall be delivered to Suite 600, 1341 G Street, NW., Washington, DC 20005.

The CROP further provides, in pertinent part, that:

The original and one copy of each document intended to be part of the record

shall be filed * * * with the Clerk of the Board when the proceeding is before the Environmental Appeals Board. A document is filed when it is received by the appropriate Clerk.

40 CFR 22.5(a)(1). According to 40 CFR 22.3, the Clerk of the Board "means the Clerk of the Environmental Appeals Board, Mail Code 1103B, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460." The purpose of the amendment is to amend 40 CFR 22.5(a)(1) by adding the following sentence after the regulatory language quoted above:

Documents filed in proceedings before the Environmental Appeals Board shall either be sent by U.S. mail (except by U.S. Express Mail) to the official mailing address of the Clerk of the Board set forth at 22.3 or delivered by hand or courier (including deliveries by U.S. Postal Express or by a commercial delivery service) to Suite 600, 1341 G Street, NW., Washington, DC 20005.

B. How Can I Get Additional Information About This Action?

You may obtain additional information about this action on the EAB's Internet home page at <http://www.epa.gov/eab>.

C. What Is the Agency's Authority for Taking This Action?

EPA is issuing this document under its general rulemaking authority. Reorganization Plan No. 3 of 1970 (5 U.S.C. app.). In addition, section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that this amendment is technical and non-substantive, and therefore, that there is good cause under 5 U.S.C. 553(b)(B) for making this rule final without prior proposal and opportunity for comment. EPA also finds good cause under 5 U.S.C. 553(d) to make this rule effective on the date of publication.

II. Do Any of the Regulatory Assessment Requirements Apply to This Action?

No. This final rule implements a technical amendment to 40 CFR part 22 to provide clear guidance on the hand-delivery address for filings with the EAB, and does not otherwise impose or amend any requirements. This action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget under Executive Order 12866, entitled

Regulatory Planning and Review (58 FR 51735, October 4, 1993). This rule does not contain any information collection requirements that require review and approval by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Because this action is not economically significant as defined by section 3(f) of Executive Order 12866, this action is not subject to Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). Since the Agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the APA or any other statute, this action is not subject to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandate Reform Act of 1995 (UMRA) (Public Law 104-94). In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the UMRA of 1995. This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999). Similarly, this rule will not have substantial direct effects on tribal governments, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175, entitled Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 6, 2000). This action does not involve any technical standards that require the Agency's consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). This rule is not subject to Executive Order 13211, entitled Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001), because this action is not a significant regulatory action under Executive Order 12866.

III. Will EPA Submit This Final Rule to Congress and the Comptroller General?

Yes. The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, generally provides that, before a rule may take effect, the agency that promulgates the rule must submit a rule report, which includes a copy of the rule, to each

House of the Congress and to the Comptroller General of the United States. CRA section 808 provides that the issuing agency may make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. EPA has made such a good cause finding, including the reasons therefor, and has established the date of publication as the effective date. As stated previously, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States, prior to publication of the rule in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 22

Environmental protection,
Administrative practice and procedure,
Courts.

Dated: December 20, 2004.

Richard McKeown,
Chief of Staff.

- 40 CFR Part 22 is amended as follows:
- 1. The authority citation for part 22 continues to read as follows:

Authority: 7 U.S.C. 136(l); 15 U.S.C. 2615; 33 U.S.C. 1319, 1342, 1361, 1415 and 1418; 42 U.S.C. 300g-3(g), 6912, 6925, 6928, 6991e and 6992d, 42 U.S.C. 7413(d), 7524(c), 7545(d), 7547, 7601 and 7607(a), 9609, and 11045.

- 2. Section 22.5 is amended by adding a sentence after the second sentence in paragraph (a)(1) to read as follows:

§ 22.5 Filing, service, and form of all filed documents, business confidentiality claims.

(a) * * *

(1) * * * Documents filed in proceedings before the Environmental Appeals Board shall either be sent by U.S. mail (except by U.S. Express Mail) to the official mailing address of the Clerk of the Board set forth at § 22.3 or delivered by hand or courier (including deliveries by U.S. Postal Express or by a commercial delivery service) to Suite 600, 1341 G Street, NW., Washington, DC 20005. * * *

- 3. Section 22.30 is amended by removing the first two sentences of paragraph (a)(1) and adding three new sentences in their place to read as follows:

§ 22.30 Appeal from or review of initial decision.

(a) * * *

(1) Within 30 days after the initial decision is served, any party may appeal any adverse order or ruling of the Presiding Officer by filing an original and one copy of a notice of appeal and an accompanying appellate brief with the Environmental Appeals Board. Appeals sent by U.S. mail (except by U.S. Postal Express Mail) shall be addressed to the Environmental Appeals Board at its official mailing address: Clerk of the Board (Mail Code 1103B), United States Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Appeals delivered by hand or courier (including deliveries by U.S. Postal Express Mail or by a commercial delivery service) shall be delivered to Suite 600, 1341 G Street, NW., Washington, DC 20005. * * *

[FR Doc. 04-28359 Filed 12-27-04; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03-OAR-2004-DC-0003; FRL-7853-9]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Excess Volatile Organic Compound and Nitrogen Oxides Emissions Fee Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the District of Columbia (District) State Implementation Plan (SIP) for ozone. The rule requires major stationary sources of volatile organic compounds (VOC) and nitrogen oxides (NO_x) in the District, which is part of the Metropolitan Washington DC Severe Ozone Nonattainment Area, to pay a fee to the District if the area fails to attain the one-hour national ambient air quality standard for ozone by November 15, 2005. The fee must be paid beginning in 2006, and in each calendar year thereafter, until the area is redesignated to attainment for the pollutant ozone. The District of Columbia submitted this rule on April 16, 2004, pursuant to the requirements of Section 110 of the Clean Air Act.

DATES: This rule is effective on February 28, 2005, without further notice, unless EPA receives adverse written comment by January 27, 2005. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the

Federal Register and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03-OAR-2004-DC-0003 by one of the following methods:

A. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. Agency Web site: <http://www.docket.epa.gov/rmepub/RME>. EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: morris.makeba@epa.gov.

D. Mail: R03-OAR-2004-DC-0003, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R03-OAR-2004-DC-0003. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, [regulations.gov](http://www.regulations.gov) or e-mail. The EPA RME and the Federal [regulations.gov](http://www.regulations.gov) Web sites are an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your